

**DRAFT**

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
WASTE MANAGEMENT DIVISION  
AND  
SURFACE WATER QUALITY DIVISION

In the matter of administrative proceedings  
against Williamsburg Receiving and Storage, LLC  
a limited liability company organized under the laws of  
the State of Michigan and doing business at  
10190 Munro Road, Township of Whitewater  
County of Grand Traverse, State of Michigan

WMD Order No. 31 - 02

State Groundwater Discharge Permit No. M 00836  
National Pollutant Discharge Elimination System Permit No. MI0044741

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CONSENT ORDER

This proceeding results from allegations specified in a Notice of Violation ("NOV") issued on \_\_\_\_\_, by the staff of the Department of Environmental Quality ("DEQ"). The DEQ alleges that Williamsburg Receiving and Storage, LLC ("WRS"), which owns and operates a cherry processing facility located at 10190 Munro Road, Township of Whitewater, County of Grand Traverse, State of Michigan, is in violation of Part 31, Water Resources Protection, and Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended ("NREPA"), MCL 324.3101 et seq.; and the rules promulgated under Part 31 and Part 115. WRS and the DEQ agree to resolve the violations set forth in the NOV in this matter and to terminate this proceeding by entry of this Consent Order.

I. STIPULATIONS

WRS and the DEQ stipulate as follows:

- 1.1 Pursuant to its authority under Section 105 and Part 31 of the NREPA, the DEQ has promulgated administrative rules necessary to implement Part 31 of the NREPA, including rules set forth in the 1999 Michigan Administrative Code, R 323.2101 through R 323.2191; 1999 Michigan Register 8, R 323.2201 through R 323.2240 (effective

August 26, 1999); and R 324.2001 to R 324.2009 (effective August 31, 2001) ("Part 5 Rules").

- 1.2 Pursuant to its authority under Section 105 and Part 115 of the NREPA, the DEQ promulgated administrative rules necessary to implement Part 115. These rules are set forth in the 1999 Michigan Administrative Code , R 299.4101 et seq., as amended by 1999 Michigan Register 3, R 299.4101 et seq. (effective April 12, 1999).
- 1.3 WRS is a person as defined by Section 301(g) of the NREPA and R 323.2202(l). WRS owns and operates a wastewater treatment facility located at 10190 Munro Road, Township of Whitewater, County of Grand Traverse, State of Michigan (the "Facility"). The following cherry processing activities occur at the Facility:
  - a. Brine consisting of calcium chloride and magnesium chloride ("Brine") is stored in lined pits outside for processing brine cherries. Cherries from the Brine pits are processed at the Facility and wastewater from this process ("Process Water") is authorized to be spray irrigated by Groundwater Discharge Permit Number M 00836 ("Groundwater Permit").
  - b. Unprocessed cherries are received in cold water shipping containers ("Containers") for processing off site, and cold water is added to the Containers as necessary to maintain cold temperatures. The DEQ has authorized the overflow from these Containers to be discharged to Tobeco Creek via the Tobeco Swamp under National Pollutant Discharge Elimination System ("NPDES") Permit Number MI0044741, issued on June 30, 2000 ("NPDES Permit"). The NPDES permit only authorizes the discharge of treated contact cooling water and does not authorize the discharge of Brine or Process Water. The cooling water discharge should only occur during fresh cherry harvest season, between late June and late August.
- 1.4 The DEQ is authorized by Section 3112(2) of Part 31 of the NREPA to enter orders requiring persons to abate pollution and, therefore, the Director has authority to enter this Consent Order with WRS.

- 1.5 WRS stipulates to the issuance and entry of this Consent Order to comply by consent and stipulates that the termination of this matter by a final order to be entered as a Consent Order is proper and acceptable. WRS further agrees not to contest the issuance of this Consent Order. This Consent Order, thus, shall be considered a final order of the DEQ and shall become effective on the date it is signed by the Chief of the Waste Management Division ("WMD") and the Chief of the Surface Water Quality Division ("SWQD"), delegates of the Director, pursuant to Section 301(b) of the NREPA.
- 1.6 WRS and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by WRS of the allegations contained in the NOV or that the law has been violated.

## **II. DEQ APPROVAL OF SUBMITTALS**

- 2.1 For any work plan, proposal, or other document, excluding applications for permits or licenses, that are required by this Consent Order to be submitted to the DEQ by WRS, the following process and terms of approval shall apply.
- 2.2 To be approved by the DEQ, any work plan, proposal, or other document required to be submitted by this Consent Order shall include all of the information required by the applicable statute and/or rule, and all of the information required by the applicable paragraph(s) of this Consent Order.
- 2.3 The DEQ may approve, disapprove, or approve with specific modifications, the required work plan, proposal, or other document. Upon DEQ approval, or approval with modifications, of a work plan, proposal, or other document, such work plan, proposal, or other document shall be incorporated by reference into this Consent Order and shall be enforceable in accordance with the provisions of this Consent Order.
- 2.4 In the event the DEQ disapproves a work plan, proposal, or other document, it will notify WRS, in writing, of the specific reasons for such disapproval. WRS shall submit, within

thirty (30) days of receipt of such disapproval, a revised work plan, proposal, or other document which adequately addresses the reasons for the DEQ's disapproval.

- 2.5 In the event the DEQ approves with specific modifications a work plan, proposal, or other document, it will notify WRS, in writing, of the specific modifications required to be made to such work plan, proposal, or other document prior to its implementation and the specific reasons for such modifications. The DEQ may require WRS to submit, prior to implementation and within thirty (30) days of receipt of such approval with specific modifications, a revised work plan, proposal, or other document which adequately addresses such modifications.
- 2.6 Failure by WRS to submit an approvable work plan, proposal, or other document within the applicable time period specified above shall subject WRS to the enforcement provisions of this Consent Order including, but not limited to, the stipulated penalty provisions commencing on the date the revised work plan, proposal, or other document was due and accumulating until an approvable work plan, proposal, or other document is submitted.
- 2.7 Any delays caused by WRS's failure to submit an approvable work plan, proposal, or other document when due shall in no way affect or alter WRS's responsibility to comply with any other deadline(s) specified in this Consent Order.
- 2.8 No informal advice, guidance, suggestions, or comments by the DEQ regarding reports, work plans, plans, specifications, schedules, or any other writing submitted by WRS will be construed as relieving WRS of its obligation to obtain written approval, if and when required by this Consent Order.

### **III. EXTENSIONS**

- 3.1 WRS and the DEQ agree that the Chief of the WMD or the Chief of the SWQD may grant WRS an extension of the specified deadlines set forth in this Consent Order. Any

extension shall be preceded by a timely written request, received by the DEQ no later than five (5) business days prior to the pertinent deadline, which shall include:

- a. Identification of the specific deadline(s) of this Consent Order that will not be met.
- b. A detailed description of the circumstances which will prevent WRS from meeting the deadline(s).
- c. A description of the measures WRS has taken and/or intends to take to meet the required deadline.
- d. The length of the extension requested and the specific date on which the obligation will be met.

The Chief of the WMD or the Chief of the SWQD shall respond promptly to such requests and shall not unreasonably withhold approval for such requests.

- 3.2 No informal advice, guidance, suggestions, or comments by the DEQ regarding reports, work plans, plans, specifications, schedules, or any other writing submitted by WRS will be construed as relieving WRS of its obligation to obtain written approval, if and when required by this Consent Order.

#### **IV. COMPLIANCE PROGRAM**

- 4.1 WRS shall achieve and maintain compliance with the requirements specified below in accordance with the following schedule:

- a. **Compliance with Permits**

- (1) On and after the effective date of this Consent Order, WRS shall fully comply with all conditions of the NPDES Permit, or any subsequently issued NPDES Permit, and the Groundwater Permit and shall permanently cease all

unauthorized discharges of wastewater, including but not limited to Process Water and Brine. This includes compliance with the NPDES Permit requirements to verbally notify the DEQ within 24 hours, followed by a written report within five (5) days for any unauthorized discharges or non-compliance with any permit condition.

- (2) Within ten (10) days of the effective date of this Consent Order, WRS shall submit a report to the Cadillac District Supervisors of the WMD and SWQD certifying that all unauthorized discharges of wastewater to the surface water, including but not limited to Brine and Process Water, have been terminated. The report shall include a detailed description of the actions taken by WRS to prevent unauthorized discharges of Brine and Process Water.
- (3) Within ten (10) days of the effective date of this Consent Order, WRS shall submit discharge monitoring report forms to the address listed in the Groundwater Permit and to the Cadillac District Supervisor of the WMD for the calendar quarters of April through June 2001, and July through September 2001, as required by Condition E.1 of the Groundwater Permit.
- (4) Within thirty (30) days of the effective date of this Consent Order, WRS shall submit an Operation and Maintenance Plan for operation of the Process Water treatment facility to the Cadillac District Supervisor of the WMD in accordance with Condition D.1 of the Groundwater Permit.

**b. Brine Storage and Secondary Containment**

- (1) Within ninety (90) days of the effective date of this Consent Order, WRS shall submit to the DEQ for review and approval, a work plan ("Secondary Containment Work Plan") to document how Brine storage areas will be reconstructed to meet the secondary containment requirements of the Part 5 Rules and prevent discharges to surface waters or groundwater. The Secondary Containment Work Plan shall include a schematic diagram of all

water flow for the entire Facility, including water supply wells and piping, Brine mixing and handling, Process Water piping, sanitary sewage, and stormwater runoff. The Secondary Containment Work Plan shall assure that all brine storage and containment areas are isolated from the effects of stormwater runoff and shall assure that no Brine is able to flow overland and discharge into road ditches and surface waters of the state.

- (2) The DEQ will approve, disapprove, or approve with modifications, the Secondary Containment Work Plan in accordance with Section II of this Consent Order.
- (3) Upon receipt of written approval of the Secondary Containment Work Plan, WRS shall implement the Secondary Containment Work Plan in accordance with the schedule contained therein.

**c. Odor Abatement**

- (1) Within thirty (30) days of the date of entry of this Consent Order, WRS shall submit to the DEQ for review and approval an Odor Abatement Work Plan. The Odor Abatement Work Plan shall include wastewater treatment system modifications designed to eliminate nuisance odors emanating from the wastewater treatment system and a schedule for implementing the modifications.
- (2) The DEQ will approve, disapprove, or approve with modifications, the Odor Abatement Work Plan in accordance with Section II of this Consent Order.
- (3) Upon receipt of written approval of the Odor Abatement Work Plan, WRS shall implement the Odor Abatement Work Plan in accordance with the schedule contained therein.

**d. Solid Waste Disposal**

- (1) On and after the effective date of this Consent Order, WRS shall not burn solid waste in accordance with R 299.4128(3).

**V. REPORTING**

- 5.1 WRS shall submit all items required in Section IV to the District Supervisor, WMD, and the District Supervisor, SWQD, DEQ, 120 West Chapin Street, Cadillac, Michigan 49601. The cover letter with each submittal shall identify the specific paragraph and requirement of this Consent Order that the submittal is intended to satisfy.
- 5.2 WRS shall submit quarterly reports describing actions taken to meet the requirements of Section IV, above. The quarterly reports shall be submitted no later than ten (10) days following the end of the calendar quarter during which the reports are generated, with the first report submitted no later than January 10, 2002.
- 5.3 WRS shall verbally report any violation(s) of the terms and conditions of this Consent Order to the Cadillac District Supervisors of the DEQ's WMD and SWQD by no later than the close of the next business day following detection of such violation(s) and shall follow such notification with a written report within five (5) business days following detection of such violation(s). The written report shall include a detailed description of the violation(s), as well as a description of any actions proposed or taken to correct the violation(s). WRS shall report any anticipated violation(s) of this Consent Order to the above-referenced individual in advance of the relevant deadlines whenever possible.

**VI. RETENTION OF RECORDS**

- 6.1 Upon request by an authorized representative of the DEQ, WRS shall make available to the DEQ all records, plans, logs, and other documents required to be maintained under this Consent Order or pursuant to Part 31 of the NREPA or its rules. All such documents shall be retained by WRS for at least a period of three (3) years from the



date of generation of the record unless a longer period of record retention is required by Part 31 of the NREPA or its rules.

#### **VII. RIGHT OF ENTRY**

- 7.1 WRS shall allow any authorized representative or contractor of the DEQ, upon presentation of proper credentials, to enter upon the premises of the Facility at all reasonable times for the purpose of monitoring compliance with the provisions of this Consent Order. This paragraph in no way limits the authority of the DEQ to conduct tests and inspections pursuant to the NREPA and the rules promulgated thereunder, or any other applicable statutory provision.

#### **VIII. PENALTIES**

- 8.1 Within thirty (30) days of the effective date of this Consent Order, WRS shall pay the sum of \$25,000 for SWQD, [add in WMD's penalty] to the State of Michigan in settlement of the DEQ's claim for civil fines arising from the violations alleged in the NOV.
- 8.2 Within thirty (30) days of the effective date of this Consent Order, WRS shall pay to the State of Michigan the sum of \$3,000 for SWQD [add in WMD's] in partial compensation for the costs of surveillance and enforcement.
- 8.3 For each failure to comply with the provisions of Section II and IV of this Consent Order, WRS shall pay stipulated penalties of \$1,500 per violation per day for one (1) to seven (7) days of violation, \$2,000 per violation per day for eight (8) to fourteen (14) days of violation, and \$2,500 per violation per day for each day of violation thereafter. For each failure to comply with any other provisions of this Consent Order, WRS shall pay stipulated penalties of \$500 per violation per day for each day of violation. Stipulated penalties shall be paid within thirty (30) days after written demand made by the DEQ.

- 8.4 To ensure timely payment of the above civil fine, costs, and stipulated penalties, WRS shall pay an interest penalty to the General Fund of the State of Michigan each time it fails to make a complete or timely payment. This interest penalty shall be based on the rate set forth at MCL 600.6013(6), using the full increment of amount due as principal and calculated from the due date for the payment until the delinquent payment is finally made in full.
- 8.5 WRS shall pay accrued stipulated penalties by certified or cashier's check made payable to the "State of Michigan" and mailed to the DEQ, Revenue Control Unit, P.O. Box 30657, Lansing, Michigan 48909-8157 or hand delivered to the DEQ, Revenue Control Unit, Constitution Hall, 5<sup>th</sup> Floor, South Tower, 525 West Allegan, Lansing, Michigan 48933. To ensure proper credit, all payments made pursuant to this Consent Order must include the Payment Identification Number \_\_\_\_\_.
- 8.6 WRS agrees not to contest the legality of the civil fine or costs paid pursuant to Paragraphs 8.1, and 8.2, above. WRS further agrees not to contest the legality of any stipulated penalties or interest penalties assessed pursuant to Paragraphs 8.3 and 8.4, above, but reserves the right to dispute the factual basis upon which a demand by the DEQ for stipulated penalties or interest penalties is made.

#### **IX. DISPUTE RESOLUTION**

- 9.1 Unless otherwise provided in this Consent Order, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Order. However, the procedures set forth in this Section shall not apply to actions by the State to enforce obligations of WRS that have not been disputed in accordance with this Section. Engagement of a dispute resolution among the Parties shall not be cause for WRS to delay the performance of any compliance requirements or response activity.
- 9.2 Any dispute that arises under this Consent Order shall in the first instance be the subject of informal negotiations between the Parties. The period of negotiations shall not

exceed twenty (20) days from the date of written notice by any Party that a dispute has arisen, unless the time period for negotiations is modified by written agreement between the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. If agreement cannot be reached on any issue within this twenty (20)-day period, the DEQ shall provide a written statement of its decision to WRS and, in the absence of initiation of formal dispute resolution by WRS under Paragraph 9.3, the DEQ position, as outlined in its written statement of decision, shall be binding on the Parties.

- 9.3 If WRS and the DEQ cannot informally resolve a dispute under Paragraph 9.2, WRS may initiate formal dispute resolution by requesting review of the disputed issues by either the SWQD or WMD Division Chief, as appropriate. This written request must be filed with the appropriate DEQ Division Chief within fifteen (15) days of WRS's receipt of the DEQ's statement of decision that is issued at the conclusion of the informal dispute resolution procedure set forth in Paragraph 9.2. WRS's request shall state the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting its position; and all supporting documentation upon which WRS bases its position. Within fourteen (14) days of the Division Chief's receipt of WRS's request for a review of disputed issues, the Division Chief will provide a written statement of decision to WRS, which will include a statement of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting her/his position; and all supporting documentation relied upon by the Division Chief's review of the disputed issues. The Division Chief's review of the disputed issues may be extended by written agreement of the Parties.
- 9.4 The written statement of the Division Chief issued under Paragraph 9.3 shall be binding on the Parties unless, within fifteen (15) days after receipt of DEQ's written statement of decision, WRS files a petition for judicial review in a court of competent jurisdiction that shall set forth a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Order. Nothing in this Consent Order affects the limitations on the timing of judicial review of DEQ decisions

regarding the selection, extent or adequacy of any response activity as provided for in Part 201, Environmental Remediation, of the NREPA.

- 9.5 An administrative record of the dispute shall be maintained by the DEQ. The administrative record shall include all of the information provided by WRS pursuant to Paragraph 9.3, as well as any other documents relied upon by the DEQ in making its final decision pursuant to Paragraph 9.3. Where appropriate, the DEQ shall allow submission of supplemental statements of position by the Parties to the dispute.
- 9.6 In proceeding on any dispute, WRS shall have the burden of demonstrating on the administrative record that the position of the DEQ is arbitrary and capricious or otherwise not in accordance with law. In proceedings on any dispute initiated by WRS, WRS shall bear the burden of persuasion on factual issues.
- 9.7 Notwithstanding the invocation of dispute resolution procedures under this Section, stipulated penalties shall accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Order, but payment shall be stayed pending resolution of the dispute. Stipulated penalties shall be paid within 30 days after resolution of the dispute. WRS shall pay that portion of a demand for payment of stipulated penalties that is not subject to dispute resolution procedures in accordance with and in the manner provided in Section VIII (Penalties).

#### **X. FORCE MAJEURE**

- 10.1 WRS shall perform the requirements of this Consent Order within the time limits established herein, unless performance is prevented or delayed by events that constitute a "Force Majeure." Any delay in the performance attributable to a "Force Majeure" shall not be deemed a violation of WRS's obligations under this Consent Order in accordance with this Section.

- 10.2 For the purpose of this Consent Order, "Force Majeure" means an occurrence or non-occurrence arising from causes not foreseeable, beyond the control of, and without the fault of WRS, such as: an Act of God, untimely review of permit applications or submissions by the DEQ or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by WRS's diligence and that delay the performance of an obligation under this Consent Order. "Force Majeure" does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of WRS's actions or omissions.
- 10.3 WRS shall notify the DEQ, by telephone, within forty-eight (48) hours of discovering any event which causes a delay in its compliance with any provision of this Consent Order. Verbal notice shall be followed by written notice within ten (10) calendar days and shall describe, in detail, the anticipated length of delay, the precise cause or causes of delay, the measures taken by WRS to prevent or minimize the delay, and the timetable by which those measures shall be implemented. WRS shall adopt all reasonable measures to avoid or minimize any such delay.
- 10.4 Failure of WRS to comply with the notice requirements of Paragraph 10.3, above, shall render this Section X void and of no force and effect as to the particular incident involved. The DEQ may, at its sole discretion and in appropriate circumstances, waive the notice requirements of Paragraph 10.3, above.
- 10.5 If the Parties agree that the delay or anticipated delay was beyond the control of WRS, this may be so stipulated and the Parties to this Consent Order may agree upon an appropriate modification of this Consent Order. If the Parties to this Consent Order are unable to reach such agreement, the dispute shall be resolved in accordance with Section IX (Dispute Resolution) of this Consent Order. The burden of proving that any delay was beyond the reasonable control of WRS, and that all the requirements of this Section X have been met by WRS, is on WRS.

- 10.6 An extension of one compliance date based upon a particular incident does not necessarily mean that WRS qualifies for an extension of a subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

## **XI. GENERAL PROVISIONS**

- 11.1 With respect to any violations not specifically addressed and resolved by this Consent Order, the DEQ reserves the right to pursue any other remedies to which they are entitled for any failure on the part of WRS to comply with the requirements of the NREPA and its rules.
- 11.2 The DEQ and WRS consent to enforcement of this Consent Order in the same manner and by the same procedures for all final orders entered pursuant to Part 31, MCL 324.3101 et seq.; and enforcement pursuant to Part 17, Michigan Environmental Protection Act, of the NREPA, MCL 324.1701 et seq.
- 11.3 This Consent Order in no way affects WRS's responsibility to comply with any other applicable state, federal, or local laws or regulations.
- 11.4 Nothing in this Consent Order is or shall be considered to affect any liability WRS may have for natural resource damages caused by WRS's ownership and/or operation of the Facility. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.
- 11.5 The provisions of this Consent Order shall apply to and be binding upon the Parties to this action, their officers, directors, agents, servants, employees, successors and assigns, and on those persons in active concert or participation with them who receive actual notice of this Consent Order. WRS shall give notice of this Consent Order to any prospective successor in interest prior to transfer of ownership and shall notify the DEQ of such proposed sale or transfer.

## **XII. TERMINATION**

**12.1 This Consent Order shall remain in full force and effect until expressly terminated by a written Notice of Termination issued by the DEQ. WRS may request that the DEQ issue a written Notice of Termination at any time after achieving compliance with this Consent Order. Such a request shall consist of a written certification that WRS has fully complied with all of the requirements specified in this Consent Order and payment of any fines and penalties required in this Consent Order. Specifically, this certification shall include:**

- a. The date of compliance with each provision of the compliance program in Section IV, and the date any fines or penalties were paid;**
- b. A statement that all required information has been reported to the District Supervisor;**
- c. Confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the Facility.**

**The DEQ may also request additional relevant information. The DEQ shall not unduly withhold issuance of a Notice of Termination.**

Signatories

The undersigned CERTIFY they are fully authorized by the party they represent to enter into this Consent Order to comply by consent and to EXECUTE and LEGALLY BIND that party to it.

Williamsburg Receiving and Storage, LLC

Department of Environmental Quality

Russell J. Harding  
Director

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Jim Sygo, Chief  
Waste Management Division

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
David Hamilton, Chief  
Surface Water Quality Division

Date: \_\_\_\_\_

Approved as to Form:

Jennifer M. Granholm  
Attorney General

\_\_\_\_\_  
Robert P. Reichel  
Assistant Attorney General  
Natural Resources and Environmental  
Quality Division  
5<sup>th</sup> Floor, Constitution Hall  
Lansing, Michigan 48933

Date: \_\_\_\_\_